

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION LD.NO.20 OF 2005

Jawaharlal Jethanand Panjabi & Anr...Petitioners

Vs.

The Municipal Corporation for

Grater Mumbai & Ors.

...Respondents

....

Mr.N.G.Bhat for the Petitioner.

Mrs.N.V.Sanglikar for the Respondents.

.....

CORAM : DR.D.Y.CHANDRACHUD, J.

20th January 2005.

P.C.:

This Petition seeks to impugn a notice under Section 354-A of the Mumbai Municipal Corporation Act, 1888 and the notice under Section 53(1) of the Maharashtra Regional and Town Planning Act, 1966. On 15th December 2004, the Municipal Corporation rejected a development proposal for proposed alterations and for a change of user from

residence to Trade School at Bungalow No.4, Chetak Co-operative Housing Society Ltd, C.T.S.No.C/1381, 1382 of Village Bandra, Pali Hill Road, Bandra (West), Mumbai. On 24th December 2004, a stop work notice under Section 354-A was issued by the Municipal Corporation and finally on 1st January 2005, a notice under Section 53(1) of the M.R.T.P.Act, 1966 has been issued. The Municipal Corporation has filed an affidavit in reply stating that on detecting unauthorised work, it was found that additions and alterations were being carried out in Row House No.4 of Chetak Co-operative Housing Society Ltd. A Junior Engineer had issued a stop work notice under Section 354-A calling upon the Petitioners to stop forthwith the unauthorised work and produce documentary evidence within 24 hours. The Petitioners submitted a Xerox copy of scrutiny fee paid to the Executive Engineer, Building Proposal for change of user. On receipt of the aforesaid copy, an enquiry was made with the office of the Executive Engineer, Building Proposal (Western Suburbs) when it was informed that the proposal submitted by the Petitioners had already been rejected. When the site was inspected on 29th December 2004, it was found that the work was under construction and the Petitioners had started a beauty parlour on the second floor of the row house

without permission. Consequently, notice under Section 53(1) of the M.R.T.P. Act, was issued on 1st January 2005. The Municipal Corporation had called upon the Petitioners to discontinue the unauthorised user that was commenced without permission. Before any action could be initiated, these proceedings were instituted.

There is merit in the submission made on behalf of the Municipal Corporation that the Petitioners cannot carry on the business of a beauty parlour without due and requisite permission. The Petitioners did not have any valid permission and hence, the notice under Section 53(1) cannot be faulted. There is no merit in the Petition which is accordingly rejected.

Learned Counsel appearing on behalf of the Petitioners, however, states that the Petitioners would discontinue the existing user and would make a fresh application before the Municipal Corporation for such user as is permissible in law after clearing all the arrears on account of property taxes. It is needless to add that the Municipal Corporation shall dispose of the application, if made, on merits.

